

**§ 1439.505 County committee determinations of general applicability.**

(a) FSA county committees shall determine whether that county was determined eligible under the 1998 FCP, and whether the land has been unusable from October 1, 1999 through September 30, 2000 due to continuing flooding. In making this determination, the FSA county committee shall use what it considers to be the best information available including but not limited to: Cooperative State Research, Education, and Extension Service; Natural Resources Conservation Service; aerial photography; rainfall data; and general knowledge of losses due to flooding.

(b) With respect to each eligible county, the FSA county committee for that county shall establish a separate payment rate for cropland and pasture-land. These rates shall be reviewed by the FSA state committee and shall be equal to the average rental rate for the years 1996 through 2000 for all such land of each type in the county. Where these rates cannot be set in the manner provided for in paragraph (c) of this section, the FSA state committee may take into account rates established for the Conservation Reserve Program operated under 7 CFR part 1410 and ensure, subject to paragraph (c) of this section, that the rates are comparable. The Deputy Administrator shall review and may adjust the rates for reasonableness and consistency.

(c) Except as provided by the Deputy Administrator, rental rates shall be equal to the applicable county average for the kind of land involved using established NASS data in all locations where NASS has established rental rates on a county-by-county basis for 2000.

**§ 1439.506 Eligible land and loss criteria.**

(a) The flooded land for which a producer requests benefits must be within the physical boundary of an eligible county. Producers in unapproved counties contiguous to an eligible county will not receive benefits under this subpart.

(b) To be eligible for benefits under this subpart, a producer in an eligible county must have land in a county which is eligible for payment. Such

land, to be eligible for payment must meet all of the following criteria:

(1) The land is cropland or pasture land used for the production of feed for livestock (haying, grazing, or feed grain production) or other agricultural use in one or more years during the period beginning October 1, 1991, through September 30, 1999;

(2) The land is inaccessible or unable to be used for crop production, grazing, or haying because of flooding or excess moisture during all of the period beginning October 1, 1999, through September 30, 2000 unless some other period is established as the 2000-crop year for the commodity by the Deputy Administrator;

(3) The land was not used for planting during October 1, 1999, through September 30, 2000;

(4) The land has been owned, leased or under a binding cash lease by the producer continuously since October 1, 1999;

(5) The land is a contiguous parcel of land with an area equal to one acre or more;

(6) The land was not, except as determined by the Deputy Administrator, the subject of, nor will be the subject of, any other federal payment for activities or lack of activity during the period October 1, 1999, through September 30, 2000, whether or not disaster-related, with the exception of the production flexibility contract (PFC) program payments received under 7 CFR part 1412. This prohibition includes but is not limited to other payments under this part, or payments under the Conservation Reserve Program (7 CFR part 1410), the Wetlands Reserve Program (7 CFR part 1467), any Emergency Watershed Protection Program, or Federal Easement Program.

(c) On Form CCC-454 producers shall be required to certify by tract on each farm the number of flooded cropland and non-cropland acres for the farm in 2000 and the number of flooded cropland and non-cropland acres in 1992. To establish the acreage eligible for payment, flooded land certified for 1992 for each type shall be subtracted from the flooded land certified for 2000 for the applicable type. The difference will be the acreages of cropland and non-cropland subject to flooding and eligible for